

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Tuesday, September 14, 2021

Hearing Room 301

11:00 AM

6:19-19092 Hakim M. Iscandari and Christine E. Allen

Chapter 13

#1.00 CONT. Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 41015 Crimson Pillar Lane, Lake Elsinore, CA 92532

From: 7/20/21, 8/31/21

MOVANT: DEUTSCHE BANK NATIONAL TRUST COMPANY

EH ____

[Tele. appr. Daniel Fujimoto, rep. creditor, Deutsche Bank National Trust Company]

Docket 123

Tentative Ruling:

7/20/2021

Service: Proper

Opposition: Debtors

Parties to apprise the Court of the status of mortgage arrears and of any adequate protection discussion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Hakim M. Iscandari

Represented By

Christopher J Langley

Michael Smith

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Tuesday, September 14, 2021

Hearing Room 301

11:00 AM

CONT... Hakim M. Iscandari and Christine E. Allen

Chapter 13

Joint Debtor(s):

Christine E. Allen

Represented By
Christopher J Langley
Michael Smith

Movant(s):

Deutsche Bank National Trust

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Tuesday, September 14, 2021

Hearing Room 301

11:00 AM

6:21-14015 Teresa Louise Murray

Chapter 13

#2.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 63851 Halloran Summit Road, Nipton, CA 92364 with Declaration of Donald W. Sieveke and Points and Authorities (Motion filed 8/20/21)

MOVANT: EVANS ROAD, LLC

EH__

[Tele. appr. Todd Turoci, rep. Debtor]

[Tele. appr. Donald Sieveke, rep. creditor, Evans Road, LLC]

Docket 14

Tentative Ruling:

09/14/2021

Service: Proper

Opposition: Yes

FACTS

Debtor's schedules reflect that Debtor owns a one-half interest in the real property ("the property") with a scheduled value of \$490,000. [Dkt. No. 1]. Thus, the value of the Debtor's interest is \$245,000. The total balance of Movant's first deed of trust is \$494,468. *Id.* On Schedule D, Debtor listed secured debts totaling \$865,066. *Id.*

Movant asserts that relief from stay should be granted because (1) under § 362(d)(1), there is lack of adequate protection of Movant's interest in the property, (2) under § 362(d)(2), Debtor has no equity in the property and the property is not necessary to an effective reorganization, (3) Debtor exceeds the unsecured debt limit, and (4) the Debtor's bankruptcy was filed in bad faith. [Dkt. No. 14]. Debtor asserts that relief from stay should not be granted because (1) Debtor is post-petition current on the

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Tuesday, September 14, 2021

Hearing Room 301

11:00 AM

CONT... Teresa Louise Murray

Chapter 13

mortgage or on Chapter 13 plan payment, (2) the mortgage to Movant is being provided in full in the Chapter 13 plan, (3) the case was filed in good faith, and (4) Debtor's plan is feasible. [Dkt. No. 31]. Also, Debtor responds that he filed five Motions to Avoid Judgment Liens of Discover Bank, Hospital of Barstow, Inc, Unifund CCR Partners, 2nd Unifund CCR Partners, and Wells Fargo Bank, N.A. [Dkt Nos. 17, 18, 19, 20, 21, and 31]. The total amount of debt secured by these judgment liens is \$591,369.87. *Id.*

DISCUSSION

I. Under § 362(d)(1), There is an Adequate Protection, and Under § 362(d)(2), The Property Is Necessary for Reorganization.

1. Under § 362(d)(1), there is no equity cushion but there is an adequate protection.

Under 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . for cause, including the lack of adequate protection of an interest in property of such party in interest . . ." *See In re Big3D, Inc.*, 438 B.R. 214, 220–21 (B.A.P. 9th Cir. 2010); *In re Elmore*, 94 B.R. 670, 673 (Bankr. C.D. Cal. 1988) ("Lack of adequate protection of a creditor's interest in property is a species of cause for relief from stay under 11 U.S.C. § 362(d)(1)").

Here, there is no equity cushion because the fair market value of the Debtor's one-half interest in the property is \$245,500 and Movant's first deed of trust is \$494,468 [Dkt. Nos. 1, 14]. However, there appears to be adequate protection because the property is fully provided for Chapter 13 plan and all post-petition plan payments are current. [Dkt. No. 31].

2. Under § 362(d)(2), Debtor has no equity in the property, but the property is necessary for reorganization.

Under 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . if (A) the debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization. *See In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 869 (B.A.P.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Tuesday, September 14, 2021

Hearing Room 301

11:00 AM

CONT... **Teresa Louise Murray**
9th Cir. 2012).

Chapter 13

Here, Debtor has no equity in the property because the fair market value of the Debtor's one-half interest in the property is \$245,500 and Movant's first deed of trust is \$494,468 [Dkt. Nos. 1, 14]. However, Debtor has established that the property is necessary to an effective reorganization because it is occupied by a tenant and Debtor receives \$11,000 per month in rental income, which is used to make plan payments. [Dkt. No. 31].

II. Debtor Exceeds the Jurisdictional Limit of Unsecured Debt.

Under 11 U.S.C. § 362(g), a creditor has the burden of proving that a debtor does not have equity in property, while the debtor has the burden of proof on all other issues to show that the stay should not be modified. 11 U.S.C. § 109(e) limits Chapter 13 eligibility to individuals that owes noncontingent, liquidated, unsecured debts which total less than \$419,275 on the date of the filing of the petition, and secured debt of less than \$1,257,850. Eligibility is normally determined based on the figures included in the debtor's original schedules, checking only to see that the schedules were prepared in good faith. *In re Scovis*, 249 F.3d 975, 982 (9th Cir. 2001) (debt secured by avoidable lien is treated as unsecured); *see also In re Guastella*, 341 B.R. 908, 916 (B.A.P. 9th Cir. 2006). Here, Debtor's scheduled unsecured debts do not exceed the statutory limitations for filing a Chapter 13 petition because the aggregate unsecured debt was \$50,829 when the Chapter 13 petition was filed.

However, with the rule stated above, the *Scovis* decision applied a "principle of certainty," that a judgment lien which impaired a homestead exemption could be avoided under § 522(f). *See In re Scovis*, 249 F.3d at 984.

The Court of Appeals held that even though the lien would not be avoided until after the Chapter 13 petition was filed, the fact that the debtors listed the homestead exemption and the lien on the schedules provides the bankruptcy court with a sufficient degree of certainty to regard the judgment lien as unsecured as of the petition date for eligibility purposes. *Id.*; *see also In re Slack*, 187 F.3d 1070, 1074–75 (9th Cir. 1999) ("Even if a debtor disputes the existence of liability, if the amount of the debt is calculable with certainty, then it is liquidated for the purposes of § 109(e)").

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Tuesday, September 14, 2021

Hearing Room 301

11:00 AM

CONT... Teresa Louise Murray

Chapter 13

Here, there is a sufficient degree of certainty to regard the judgment liens as unsecured based on the Motions to Avoid Judgment Liens [Dkt Nos. 17, 18, 19, 20, 21, and 31], after which, when the Motions are granted, the amount of the Debtor's unsecured debt will exceed the jurisdictional amount allowed under Chapter 13 [Dkt. No. 14].

Based on *Scovis*, the amount of the unsecured debt associated with the judgment liens should be included as unsecured debt in determining eligibility for Chapter 13. If the Motions are granted, the judgment liens, totaling \$591,369.87, will no longer be encumbered by the property. Also, the Debtor has scheduled \$50,829 in unsecured debt. Therefore, the amount of the Debtor's unsecured debt will be \$642,198.87, which is more than the jurisdictional limitation for Chapter 13 eligibility.

III. The Debtor's Bankruptcy Was Not Filed in Bad Faith.

Under 11 U.S.C. § 1325(a)(5), the court may not confirm a chapter 13 plan absent a finding that the plan has been proposed in good faith and not by any means forbidden by law. Under 11 U.S.C. § 1307(c), the court may dismiss a chapter 13 case for cause, which includes a filing in bad faith. *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994); *In re Morimoto*, 171 B.R. 85, 86 (B,A,P, 9th Cir. 1994). Bad faith involves the application of the "totality of the circumstances" test. *In re Leavitt*, 171 F.3d 1219, 1224–25 (9th Cir. 1999) (regarding test for a dismissal "with prejudice" pursuant to Bankruptcy Code § 349(a) grounded on bad faith). The bankruptcy court should consider the following factors: (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner; (2) the debtor's history of filings and dismissals; (3) whether the debtor only intended to defeat state court litigation; and (4) whether egregious behavior is present. *Id.*

Here, Movant argues that (1) Debtor scheduled some of debts in their original amounts without accrued interest, and (2) the Debtor's Schedule D shows the value of the collateral as \$490,000 when the judgment lien is secured by one-half that amount with the Debtor's one-half interest in the property. [Dkt. Nos. 14]. However, Debtor does not appear to be engaging in unfair manipulation of the code, in bad faith. Here, (1) Debtor is not post-petition delinquent on the mortgage or on Chapter 13 plan payment, and (2) the mortgage to Movant is being provided in full in the Chapter 13

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Tuesday, September 14, 2021

Hearing Room 301

11:00 AM

CONT... Teresa Louise Murray

Chapter 13

plan. Moreover, (1) Debtor does not have the history of filings and dismissals, and (2) Movant does not provide whether Debtor only intended to defeat state court litigation or whether egregious behavior is present. [Dkt. No. 31]. Thus, the Debtor's bankruptcy was not filed in bad faith.

CONCLUSION

The Court notes that there is an adequate protection under § 362(d)(1), and the property is necessary for reorganization under § 362(d)(2). Notwithstanding, having reviewed, and considered the motion and response to the motion, the Court finds that Debtor exceeds the jurisdictional limit of unsecured debt limitation in Chapter 13 eligibility under § 362(d)(1).

Accordingly, the Court is inclined to:

- GRANT relief from stay based on ineligibility for Chapter 13 because of debt limits pursuant to 11 U.S.C. § 362(d)(1);
- DENY relief from stay pursuant to 11 U.S.C. § 362(d)(2);
- DENY alternative request under ¶13;
- GRANT waiver of FRBP 4001(a)(3) stay under ¶7;
- GRANT the other request under ¶2;
- DENY the other request under ¶10A;
- DENY the other request under ¶11A.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Teresa Louise Murray

Represented By
Todd L Turoci

Movant(s):

Evans Road LLC

Represented By
Donald W Sieveke

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Tuesday, September 14, 2021

Hearing Room 301

11:00 AM

CONT... Teresa Louise Murray

Chapter 13

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Tuesday, September 14, 2021

Hearing Room 301

11:00 AM

6:21-14314 Rafael Hernandez and Roxana Quinteros Hernandez

Chapter 7

#2.10 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 7950 Etiwanda Ave, apt 34101, Rancho Cucamonga, CA

MOVANT: KNICKERBOCKER PROPERTIES, INC XLVII

EH__

[Tele. appr. John Bouzane, rep. creditor, Knickerbocker Properties, Inc.]

Docket 11

Tentative Ruling:

9/14/2021

Service: Improper (no telephonic notice to Debtors)

Opposition: None

Movant asserts that cause exists under 11 U.S.C. § 362(d)(1) to continue the unlawful detainer action because (1) Movant caused a notice to quit to be served on Debtors, (2) an unlawful detainer proceeding was commenced on 05/20/2021, and (3) no lease payments have been made after the filing of the bankruptcy petition.

Here, Movant did not provide the telephonic notice to Debtors because Movant did not have Debtors' phone numbers on the petition, so notice is improper. Movant did not state whether he requested Debtors' phone numbers from Debtors' attorney. Also, Movant did not provide evidence that Debtors did not comply with the COVID-19 eviction prohibition guidelines. *Tenant Protection guidelines – Housing is Key*, CALIFORNIA STATE PORTAL, https://housing.ca.gov/tenant/protection_guidelines.html. (last visited Sep. 9, 2021) ("If you were unable to pay all or some of your rent between March 1, 2020 and August 31, 2020. . . . You cannot be evicted IF you return a declaration of COVID-19 related financial distress, signed under penalty of perjury, and returned within 15 business days of receiving a notice to "pay or quit"). Thus, Movant should address foregoing issues.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Tuesday, September 14, 2021

Hearing Room 301

11:00 AM

CONT... Rafael Hernandez and Roxana Quinteros Hernandez

Chapter 7

Accordingly, the Court is inclined to:

- DENIES relief from stay pursuant to 11 U.S.C. § 362(d)(1);
- DENIES Waiver of the 14-day waiting period of FRBP 4001(a)(3);
- DENIES Relief from § 1301 co-debtor stay because (1) this is a Chapter 7 case, and (2) there is no co-debtor.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Rafael Hernandez

Represented By
Andy Nguyen

Joint Debtor(s):

Roxana Quinteros Hernandez

Represented By
Andy Nguyen

Movant(s):

Knickerbocker Properties, Inc.

Represented By
John E Bouzane

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Tuesday, September 14, 2021

Hearing Room 301

2:00 PM

6:18-10628 Markus Anthony Boyd

Chapter 11

#3.00 Debtor's Motion to Modify Plan

Also #4, 5

EH__

[Tele. appr. Nicholas Gebelt, rep. Debtor]

Docket 257

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Markus Anthony Boyd

Represented By
Nicholas W Gebelt

Movant(s):

Markus Anthony Boyd

Represented By
Nicholas W Gebelt

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Tuesday, September 14, 2021

Hearing Room 301

2:00 PM

6:18-10628 Markus Anthony Boyd

Chapter 11

#4.00 CONT Confirmation of Chapter 11 Plan

From: 1/14/20, 2/25/20, 8/25/20, 1/12/21, 7/20/21

Also #3, 5

EH__

[Tele. appr. Nicholas Gebelt, rep. Debtor]

Docket 179

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Markus Anthony Boyd

Represented By
Nicholas W Gebelt

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Tuesday, September 14, 2021

Hearing Room 301

2:00 PM

6:18-10628 Markus Anthony Boyd

Chapter 11

**#5.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report**

From: 3/20/18, 8/21/18, 10/23/18, 11/27/18, 2/5/19, 5/7/19, 7/30/19, 10/8/19,
10/29/19, 1/14/20, 2/25/20, 8/25/20, 1/12/21, 7/20/21

Also #3, 4

EH__

[Tele. appr. Nicholas Gebelt, rep. Debtor]

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Markus Anthony Boyd

Represented By
Nicholas W Gebelt